

Federal Reserve System

§ 210.12

Bank shall neither count the proceeds as reserve for purposes of part 204 of this chapter (Regulation D) nor make the proceeds available for use until it receives payment in actually and finally collected funds.

[45 FR 68634, Oct. 16, 1980, as amended at 62 FR 48173, Sept. 15, 1997]

EFFECTIVE DATE NOTE: At 62 FR 48173, Sept. 15, 1997, in § 210.11, the last sentence of paragraph (b) was revised, effective Jan. 2, 1998. For the convenience of the user, the superseded text follows:

§ 210.11 Availability of proceeds of noncash items; time schedule.

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(b) * * * A Reserve Bank may, however, refuse at any time to permit the use of credit given for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

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§ 210.12 Return of cash items and handling of returned checks.

(a) *Return of items*—(1) *Return of cash items handled by Reserve Banks.* A paying bank that receives a cash item from a Reserve Bank, other than for immediate payment over the counter, and that settles for the item as provided in § 210.9(b) of this subpart, may, before it has finally paid the item, return the item to any Reserve Bank (unless its Administrative Reserve Bank directs it to return the item to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A paying bank that receives a cash item from a Reserve Bank also may return the item prior to settlement, in accordance with § 210.9(b) of this subpart and the Reserve Banks' operating circulars. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(2) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in § 229.2(k) of this chapter (Regulation CC), other

than from a Reserve Bank, and that determines not to pay the check, may send the returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A returning bank may send a returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars.

(b) *Handling of returned checks.* (1) The following parties, in the following order, are deemed to have handled a returned check sent to a Reserve Bank under paragraph (a) of this section—

- (i) The paying or returning bank;
- (ii) The paying bank's or returning bank's Administrative Reserve Bank;
- (iii) The Reserve Bank that receives the returned check from the paying or returning bank (if different from the paying bank's or returning bank's Administrative Reserve Bank); and
- (iv) Another Reserve Bank, if any, that receives the returned check from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a party that handles a returned check and is not a returning bank with respect to a returned check.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code.

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank—

- (1) Authorizes the paying or returning bank's Administrative Reserve

Bank, and any other Reserve Bank or returning bank to which the returned check is sent, to handle the returned check (and authorizes any Reserve Bank that handles settlement for the returned check to make accounting entries) subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in § 229.34 of this title (but this paragraph does not limit any warranty by a paying or returning bank arising under state law); and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(i) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(ii) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Warranties by Reserve Bank.* By handling a returned check under this subpart, a Reserve Bank makes the returning bank warranties as set forth in § 229.34 of this chapter, subject to the terms of part 229 of this chapter (Regulation CC). The Reserve Bank shall not have or assume any other liability to the transferee returning bank, to any subsequent returning bank, to the depository bank, to the owner of the check, or to any other person, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this title.

(e) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned Check based on—

(1) The alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or

(3) Any warranty made by the Reserve Bank under 12 CFR 229.34,

The Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and

other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

(f) *Methods of recovery.* (1) The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or by charging another returning Reserve Bank), if—

(i) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(ii) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (f) may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph (f). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (f) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(g) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with subpart C of part 229 and its operating circular.

(h) *Settlement.* A subsequent returning bank or depository bank shall settle with its Administrative Reserve Bank for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart. Settlement with its Administrative Reserve Bank is deemed to be settlement with the Reserve Bank from which the returning bank or depository bank received the item.

(i) *Security interest.* When a paying or returning bank sends a returned check to a Reserve Bank, the paying bank, returning bank, and any prior returning bank grant to the paying bank's or returning bank's Administrative Reserve Bank a security interest in all of

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their respective assets in the possession of, or held for the account of, any Reserve Bank, to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the paying bank, returning bank, or prior returning bank, or if the paying bank, returning bank, or prior returning bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

[53 FR 21985, June 13, 1988, as amended at Reg. J, 59 FR 22966, May 4, 1994; 62 FR 48173, Sept. 15, 1997]

EFFECTIVE DATE NOTE: At 62 FR 48173, Sept. 15, 1997, §210.12 was amended by revising paragraphs (a), (b), and (c)(1), the first sentence of paragraph (d), paragraphs (f) and (h), and the first sentence of paragraph (i); and by removing the last sentence of paragraph (g), effective Jan. 2, 1998. For the convenience of the user, the superseded text follows:

§210.12 Return of cash items and handling of returned checks.

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in §210.9(a) of this subpart, may, before it has finally paid the item, return the item in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. A paying bank that receives a cash item directly or indirectly from a Reserve Bank also may return the item prior to settlement, in accordance with §210.9(a) and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k), other than directly or indirectly from a Reserve Bank,

and that determines not to pay the check, may send the returned check to its Reserve Bank in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating Circular. A returning bank may send a returned check to its Reserve Bank in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular.

(c) * * *

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

* * * * *

(d) *Warranties by Reserve Bank.* By sending a returned check and receiving settlement or other consideration for it, a Reserve Bank makes the returning bank warranties as set forth in §229.34 of this title, subject to the terms of part 229 of this title. * * *

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(f) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or, if the returning bank is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

(1) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(2) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

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(g) * * * A Reserve Bank may permit or require the paying or returning bank to send direct to another Reserve Bank a returned check with respect to which the depository bank is located within the other Reserve Bank's District, in accordance with §210.4(b).

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(h) *Settlement.* A subsequent returning bank or depository bank shall settle for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart.

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(i) *Security interest.* To secure any obligation due or to become due to a Reserve Bank by a paying bank, returning bank, or prior returning bank under this subpart or subpart C of part 229 of this title, the paying bank, returning bank, and prior returning bank, by sending a returned check directly or indirectly to the Reserve Bank, grant to the Reserve Bank a security interest in all of the paying bank's, returning bank's, and prior returning bank's assets in the possession of, or held for the account of, the Reserve Bank.

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§ 210.13 Unpaid items.

(a) *Right of recovery.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, prior collecting bank, paying bank, or returning bank from or through which it was received, whether or not the item itself can be sent back. In the event of recovery from such a party, no party, including the owner or holder of the item, shall, for the purpose of obtaining payment of the amount of the item, have any interest in any reserve balance or other funds or property in the Reserve Bank's possession of the bank that failed to make payment in actually and finally collected funds.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge (including a charge authorized by § 210.9(a)(5)), or other order on a reserve balance or other funds in its possession for the purpose of settling for items under § 210.9 or § 210.12 after it receives notice of suspension or closing of the bank making the settlement for that bank's own or another's account.

[Reg. J, 59 FR 22966, May 4, 1994]

§ 210.14 Extension of time limits.

If a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time lim-

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its because of interruption of communication or computer facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

[Reg. J, 59 FR 22967, May 4, 1994]

§ 210.15 Direct presentment of certain warrants.

If a Reserve Bank elects to present direct to the payor a bill, note, or warrant that is issued and payable by a State or a political subdivision and that is a cash item not payable or collectible through a bank: (a) Sections 210.9, 210.12, and 210.13 and the operating circulars of the Reserve Banks apply to the payor as if it were a paying bank; (b) § 210.14 applies to the payor as if it were a bank; and (c) under § 210.9 each day on which the payor is open for the regular conduct of its affairs or the accommodation of the public is considered a banking day.

Subpart B—Funds Transfers Through Fedwire

SOURCE: 55 FR 40801, Oct. 5, 1990, unless otherwise noted.

§ 210.25 Authority, purpose, and scope.

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through Fedwire, and has been issued pursuant to the Federal Reserve Act—section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j))—and other laws and has the force and effect of federal law. This subpart is not a funds-transfer system rule as defined in Section 4A-501(b) of Article 4A.

(b) *Scope.* (1) This subpart incorporates the provisions of Article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B, to this subpart, the provisions of the sections of this subpart shall prevail.